

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	

**COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS IN SUPPORT OF THE
ASAE PETITION FOR STAY**

The National Association of Regulatory Utility Commissioners (NARUC) submits these comments supporting the Petition for Stay filed by the American Society of Association Executives (ASAE) in the above-captioned proceeding.¹

ASAE filed the Petition for Stay simultaneously with a Petition for Emergency Clarification. At the heart of ASAE's petitions are the Commission's unsolicited facsimile advertisement rules as they apply to tax exempt nonprofit organizations. The rules require that all unsolicited facsimile transmissions to any person be preceded by the person's prior written express invitation or permission to receive unsolicited facsimiles.² ASAE seeks an interpretation that unsolicited facsimile communications are not prohibited when issued by tax-exempt nonprofit organizations in pursuit of their authorized tax-exempt nonprofit purposes. NARUC agrees that some clarification is necessary and that a stay of the rules is warranted while the Commission considers the Petition for Clarification. Specifically, NARUC believes that an exemption that allows a nonprofit to fax to their own members and others with whom they have an established

¹ The America Society of Association Executives, Petition for Stay, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278 (filed July 25, 2003).

relationship, without having to solicit a previously signed special and specific consent form, remains appropriate. We also believe there should be some provision that allows a non-profit that does not use facsimile routinely as a marketing tool to, from time-to-time, fax registration forms and brochures in response to individual phone requests.

NARUC is a tax-exempt nonprofit trade association. It is comprised of more than 50 regulatory agencies that oversee telecommunications, water, and energy utility services. NARUC's members rely on the association to perform various services on their behalf. NARUC represents its members before the Congress, the FCC, and other federal agencies and serves as an educational resource, updating its members on the ever-changing rules and regulations and technological advancements. NARUC holds several conferences, seminars, updates and meetings every year and offers several educational and informative publications. Many of these events are put together on very short notice as the need arises and members, and past meeting attendees, are notified via facsimile of the opportunity to participate or receive materials. Membership in NARUC is voluntary and members pay dues to receive the benefits of being affiliated with the association.

Nonprofit tax exempt organizations have a relationship with their "customers" that is unique and distinguishable from a commercial enterprise. The nonprofit organization is providing a service and does not seek commercial profit on behalf of shareholders. Association with NARUC is voluntary and not tied to the purchase of goods or services. NARUC's members expect to receive promotional, educational and informational materials.

² Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, FCC 03-153, ¶ 189 (2003).
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There is no statutory or public policy reason to apply a blanket application of the “do not fax” rules to nonprofit, tax exempt organizations. The Commission should clarify that unsolicited facsimile communications are not prohibited when issued by tax-exempt nonprofit organizations in pursuit of their authorized tax-exempt nonprofit purposes in the circumstances outlined above.

The Commission’s new rules on unsolicited facsimiles are scheduled to take effect August 25, 2003. Given the potential harm the rules will cause to nonprofit entities and the confusion it will cause to their constituencies, a stay of the rules as they apply to nonprofit tax-exempt organizations is appropriate while the Commission carefully considers this matter.

Respectfully submitted,

 /s/
James Bradford Ramsay
General Counsel

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Commissioners
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August 15, 2003

CERTIFICATE OF SERVICE

I, Monica Sharma, certify that a copy of the foregoing Comments of the National Association of Regulatory Utility Commissioners in CG Docket No. 02-278 was served on this 15th day of August 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Monica Sharma

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